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10 Debtor-in-Possession

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12 **UNITED STATES BANKRUPTCY COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **SANTA ANA DIVISION**  
15

16 In re:

17 THE SOURCE HOTEL, LLC, a  
18 California limited liability company,  
19  
20 Debtor and Debtor in  
21 Possession.

Case No.: 8:21-bk-10525-ES

Chapter 11

**DEBTOR'S STATEMENT REGARDING  
STATUS OF BIDS RECEIVED AND  
AUCTION/SALE HEARING**

Auction/Sale Hearing:

Date: September 30, 2021  
Time: 2:00 p.m.  
Place: ZoomGov

1 The Source Hotel, LLC, a California limited liability company and the chapter 11 debtor  
2 and debtor-in-possession herein (the “Debtor”), hereby files this statement to advise the Court and  
3 other parties in interest regarding the status of the bids received to date, and to request that the  
4 auction and sale hearing currently scheduled before the Court on September 30, 2021 at 2:00 p.m.  
5 proceed.

6 **BACKGROUND REGARDING BIDDING PROCEDURES AND**  
7 **PROPOSED SALE**

8 The Debtor, its lender, Shady Bird Lending, LLC (“Shady Bird”), and the guarantors of the  
9 Debtor’s loan with Shady Bird, Donald Chae and Min Chae (the “Guarantors”), are parties to that  
10 certain *Stipulation For Relief From The Automatic Stay And Ancillary Relief* (together with the  
11 related agreements attached thereto, the “Settlement Stipulation”), a true and correct copy of which  
12 was filed with the Court on July 19, 2021 as Docket Number 188. Among other things, the  
13 Settlement Stipulation provides for a consensual marketing and sale process for substantially all of  
14 the Debtor’s assets (the “Assets”), including the Debtor’s partially-completed seven-story hotel  
15 with 178 rooms located in the City of Buena Park, County of Orange, State of California (the  
16 “Hotel”). The Court entered an order approving the Settlement Stipulation on August 24, 2021.

17 Among other terms, the Settlement Stipulation required the Debtor to file a motion for  
18 authority to conduct an auction of the Debtor’s Assets, comprised primarily of (i) the Hotel, (ii) the  
19 Debtor’s leasehold interest (the “Leasehold Interest”) in a 99-year ground lease with the Debtor’s  
20 affiliate, The Source at Beach, LLC (the “Ground Lease”), and (iii) flooring and carpeting,  
21 lighting, appliances, trade fixtures, furniture, furnishings and equipment already owned by the  
22 Debtor (“FF&E”).

23 In addition, the Settlement Stipulation provides for certain bidding procedures to be utilized  
24 in connection with the sale and auction of the Assets. On August 25, 2021, the Debtor filed a  
25 motion seeking approval of certain bidding procedures in connection with the auction and sale of  
26 the Assets. On September 14, 2021, the Court entered a written order granting the Debtor’s motion  
27 to approve the Debtor’s proposed bidding procedures, subject to certain modifications approved by  
28

the Court (the “Bidding Procedures”). Among other things, the Bidding Procedures provide for the following:

- Bids for the Assets must be submitted by 4:00 p.m. (Pacific time) on September 23, 2021 (“Bid Deadline”). A bid received after the Bid Deadline shall not constitute a Qualified Bid (as defined in the Bidding Procedures) unless the Debtor consents.
- A bid must include, among other documents and information, a written asset purchase agreement or other documents and written evidence of available funds or a firm irrevocable commitment for financing sufficient to consummate the proposed sale of the Assets.
- A bid must include a good-faith deposit in immediately available funds equal to four percent (4%) of the proposed purchase price.
- The Debtor reserves the right to modify the Bidding Procedures in its reasonable business judgment, in consultation with NAI and Shady Bird, in any manner that will promote the goals of the Bidding Procedures, including, without limitation: (a) extending the deadlines set forth in the Bidding Procedures; (b) adjourning the auction scheduled on September 30, 2021 at 2:00 p.m. Pacific Time (the “Auction”) at the Auction and/or adjourning the Sale Hearing in open Court without further notice; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejection of any or all Bids.

On September 9, 2021, the Debtor filed a motion (i) seeking Court authority to sell the Assets, free and clear of liens, claims, encumbrances and other interests, to the qualified bidder who is determined by the Court to be the highest and best bidder (including its designees, the “Buyer”), as determined at the Auction, (ii) seeking Court authority to assume the Ground Lease and assign the Ground Lease to the Buyer, (iii) establishing that the amount necessary to cure the Debtor’s defaults under the Ground Lease is \$0 (the “Cure Amount”), and (iv) granting related relief (the “Sale Motion”).

A number of oppositions and responses to the Sale Motion have been filed by Shady

Bird, certain mechanic's lien creditors, and other parties. On September 23, 2021, the Debtor file its reply to such oppositions and responses. The hearing on the Sale Motion is currently set for September 30, 2021 at 2:00 p.m.

#### **STATUS OF BIDS**

To date, the Debtor has received two (2) bids for the Assets. All bids and related documents and information received by the Debtor, its real estate broker, NAI Capital Commercial, Inc. ("NAI"), and/or counsel for the Debtor, Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB"), have been promptly relayed to counsel for Shady Bird and counsel for the Debtor's EB-5 lenders, Beach Orangethorpe Hotel, LLC and Beach Orangethorpe Hotel II, LLC (the "EB-5 Lenders").

The current status of each bid is described in detail below.

##### **1. McKinney Capital Bid**

Prior to the Bid Deadline, the Debtor received a written offer from McKinney Capital ("McKinney") to purchase the Assets for a purchase price of \$22,000,000. The bid documents submitted by McKinney prior to the Bid Deadline included a written asset purchase agreement and addendum and other presentations materials regarding McKinney.

On Saturday, September 25, 2021, McKinney provided to the Debtor's real estate broker, NAI Capital Commercial, Inc. ("NAI"), a binding term sheet from an entity called Sanam Holding ("Sanam"), which is intended to be the sponsor for McKinney's bid to purchase the Assets, and which reflects that Sanam has committed to provide funding of up to \$25,000,000 to facilitate McKinney's acquisition of the Assets. At the Debtor's request, on Tuesday, September 28, 2021, Sanam provided to the Debtor a letter from its bank (Credit Agricole) confirming the amount of cash available to Sanam through its credit line with the bank.

On Tuesday, September 28, 2021, LCP provided to the Debtor a loan term sheet, which provides for financing of \$24,350,000 to be provided to LCP by Stonehill Strategic Capital, LLC, as evidence of LCP's financial ability to close its purchase of the Assets.

McKinney has represented to the Debtor and LNBYB that, on Friday, September 24, 2021, its financing partner, Sanam, initiated a wire transfer in the sum of \$880,000. However,

1 the foregoing wire transfer has not been delivered to LNBYB as of the filing of this Statement,  
2 and McKinney has advised that the wire transfer (which was initiated through Credit Suisse NY)  
3 has not been released due to the requirement for a key chain passcode that Sanam has not been  
4 able to locate. On Monday, September 27, 2021, as a backup in the event that Sanam's  
5 international wire transfer does not come through, McKinney initiated three separate wire  
6 transfers totaling the sum of \$880,000. LNBYB has confirmed with First Republic Bank that a  
7 wire transfer for \$200,000 was delivered on September 28, 2021, and that a second wire transfer  
8 for \$100,000 was delivered on September 29, 2021.<sup>1</sup> As of the filing of this Statement, the third  
9 wire transfer initiated by McKinney (in the sum of \$580,000) has not yet been delivered to  
10 LNBYB.

11 2. **LCP Acquisitions, LLC & Sun Development and Management Corporation Bid**

12 On Friday, September 24, 2021 (after the Bid Deadline), the Debtor received a written  
13 offer from LCP Acquisitions, LLC and Sun Development and Management Corporation  
14 (together, "LCP") to purchase the Assets for a purchase price of \$22,250,000. The bid  
15 documents submitted by LCP included a written asset purchase agreement and addendum and  
16 other presentations materials regarding LCP. After reviewing the bid documents submitted by  
17 LCP, the Debtor inquired about a provision included in LCP's bid for the termination of the  
18 Ground Lease. In response, LCP clarified that, as a condition to its bid to purchase the Assets,  
19 LCP is requiring that the ground lessor, The Source at Beach, LLC (which is not a debtor in  
20 bankruptcy), effectively sell its fee simple interest in the real property on which the Hotel sits for  
21 a purchase price of \$250,000. The Source at Beach, LLC is unwilling to agree to such a  
22 condition. Moreover, the Bidding Procedures do not permit bids with such a condition,  
23 particularly when the condition is completely outside of the Debtor's control. Accordingly, the  
24 Debtor has communicated to LCP that its bid does not constitute a Qualified Bid as defined by  
25 the Bidding Procedures.

26 LCP delivered a deposit, in the sum of \$890,000, to LNBYB's client trust account on

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27 <sup>1</sup> LNBYB is prepared to and will provide confirmation of the receipt of all deposits  
28 delivered by bidders at the Auction and sale hearing scheduled on September 30, 2021.

1 Friday, September 24, 2021. Thereafter, on Tuesday, September 28, 2021, LCP submitted to the  
2 Debtor a loan term sheet, which provides for financing of \$24,350,000 to be provided to LCP by  
3 Stonehill Strategic Capital, LLC, as evidence of LCP's financial ability to close its purchase of  
4 the Assets.

5 The Debtor has asked LCP whether it is willing to modify its bid to provide for the  
6 purchase of the Debtor's Assets, without the condition included in its current bid for the transfer  
7 of The Source at Beach, LLC's fee simple interest in the real property on which the Hotel sits.  
8 LCP has declined to do so as of the filing of this statement. Since the bid as currently submitted  
9 by LCP does not constitute a Qualified Bid, and LCP has not indicated any willingness to modify  
10 such bid to render it a Qualified Bid, LCP is not permitted to participate in the Auction and the  
11 deposit delivered by LCP will be promptly refunded.

12 3. **Shady Bird Lending, LLC Potential Bid**

13 Pursuant to the Bidding Procedures, Shady Bird is automatically deemed a Qualified  
14 Bidder and may participate in the Auction if it chooses to do so (but is not required to do so),  
15 without being required to post any deposit. On Wednesday, September 22, 2021, counsel for  
16 Shady Bird requested confirmation from LNBYB (which LNBYB provided) that Shady Bird is  
17 automatically registered to bid at the Auction, without any formal notice to the Debtor, in the  
18 event that the Debtor approves a third party bidder.

19 **DEBTOR'S RESPONSE TO SHADY BIRD'S STATEMENT**

20 On September 27, 2021, Shady Bird filed a statement seeking the cancellation of the  
21 Auction [Doc. No. 262] (the "Statement"). In its Statement, Shady Bird contends that the bids  
22 received from McKinney and LCP are deficient and fail to comply with the Bidding Procedures  
23 because the bids were not accompanied by the required deposits and/or satisfactory proof of such  
24 bidders' financial ability to close a sale. Shady Bird argues that the Debtor's intent to proceed  
25 with the Auction and hearing on the Sale Motion on September 30, 2021 is a "litigation  
26 tactic...to prevent Shady Bird from exercising its rights under the Settlement Stipulation" and  
27 requests that the Court cancel the Auction.

1 As noted above, the Debtor does not believe that the bid submitted by LCP is a Qualified  
2 Bid. However, the Debtor believes that the bid submitted by McKinney is a Qualified Bid.  
3 While the Debtor acknowledges that McKinney did not timely comply with the Bidding  
4 Procedures, at this point, McKinney has substantially complied with the Bidding Procedures by  
5 providing a written purchase offer, deposit, and documents which evidence its financial ability to  
6 close a sale of the Assets. Any delay by McKinney in complying with the Bidding Procedures  
7 was minimal. Moreover, the Bidding Procedures expressly permit the Debtor to consent to the  
8 receipt of a bid after the Bid Deadline, which right the Debtor has reasonably exercised. The  
9 Debtor submits that there is no prejudice to Shady Bird or any other party in interest in  
10 exercising its right under the Bidding Procedures to accept a bid after the Bid Deadline,  
11 particularly since the Settlement Stipulation prohibits Shady Bird from foreclosing on the Assets  
12 until after the Auction date (*i.e.*, September 30, 2021) even if there is not a single bid received by  
13 the Debtor (which is not the case herein).

14 Although Shady Bird suggests in its Statement that any qualified bid must offer a  
15 purchase price which exceeds the allowed amount of Shady Bird's claim, the Bidding Procedures  
16 include no such requirement. There is no minimum bid amount required by the Bidding  
17 Procedures to trigger the Auction. As the Court is aware, competitive bidding at an auction often  
18 results in an increase (and sometimes, a substantial increase) in the purchase price ultimately  
19 paid by a buyer. Here, there is one qualified bidder who has expressed its intent to participate in  
20 the Auction, not including Shady Bird, which may also participate in the Auction should it elect  
21 to do so. The Debtor's request to proceed with the Auction is not a "litigation tactic" as Shady  
22 Bird argues, but is a good faith effort to foster competitive bidding for the Assets and to facilitate  
23 a successful sale of the Assets, for the benefit of all creditors. If the Auction were to be  
24 cancelled, as Shady Bird demands, the Assets would foreclosed upon by Shady Bird as early as  
25 October 1, 2021, which benefits no creditor other than Shady Bird.

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1 Based on the foregoing, the Debtor respectfully submits that the Auction and hearing on  
2 the Sale Motion should proceed as scheduled on September 30, 2021 at 2:00 p.m.

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4 Dated: September 29, 2021

THE SOURCE HOTEL, LLC

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7 By: \_\_\_\_\_

8 RON BENDER

JULIET Y. OH

9 LEVENE, NEALE, BENDER,

YOO & BRILL L.L.P.

10 Attorneys for Chapter 11 Debtor and  
11 Debtor-in-Possession  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document **DEBTOR'S STATEMENT REGARDING STATUS OF BIDS RECEIVED AND AUCTION/SALE HEARING** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **September 29, 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender rb@lnbyb.com
- Sean R Bozarth seanb@novianlaw.com
- Christopher G. Cardinale ccardinale@agclawfirm.com, mgonzalez@agclawfirm.com
- Michael G Fletcher mfletcher@frandzel.com, sking@frandzel.com
- Amir Gamliel amir-gamliel-9554@ecf.pacerpro.com, cmallahi@perkinscoie.com; DocketLA@perkinscoie.com
- Robert P Goe kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com
- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Peter F Jazayeri peter@jaz-law.com
- Won Lee dlee@metallawgroup.com
- Daniel A Lev dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com; dlev@ecf.inforuptcy.com
- Robert K Lu ewu@reidwise.com
- Aaron J Malo amalo@sheppardmullin.com, clopez@sheppardmullin.com; abilly@sheppardmullin.com
- Kyle J Mathews kmathews@sheppardmullin.com
- Juliet Y Oh jyo@lnbyb.com, jyo@lnbrb.com
- Ho-El Park hpark@hparklaw.com
- Ronald N Richards ron@ronaldrichards.com, morani@ronaldrichards.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:** On **September 29, 2021**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

None.

☐ Service List continued on attached page

1 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR**  
2 **EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR,  
3 on **September 29, 2021**, I served the following persons and/or entities by personal delivery, overnight  
4 mail service, or (for those who consented in writing to such service method), by facsimile transmission  
5 and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or  
6 overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

7 *None.*

8 I declare under penalty of perjury under the laws of the United States of America that the foregoing is  
9 true and correct.

10 September 29, 2021

11 Stephanie Reichert

12 /s/ Stephanie Reichert

13 *Date*

14 *Type Name*

15 *Signature*